Hastings International and Comparative Law Review

Volume 39
Number 1 *Winter 2016*

Article 15

1-1-2016

A Comparative Perspective: Recognition of the Continuous Injury Trigger in Insurance Law in the United States and the United Kingdom

Emalie Diaz Sundale

A Comparative Perspective: Recognition of the "Continuous Injury" Trigger in Insurance Law in the United States and the United Kingdom

BY EMALIE DIAZ SUNDALE*

I. Introduction

The standard Commercial General Liability coverage form obligates an insurer to indemnify the insured for bodily injury and property damages caused by an "occurrence" during the policy period.[1] The form defines "occurrence" as "an accident, including continuous or repeated exposure to substantially the same harmful condition."[2] When an injury occurs over a period of time, questions arise in pinning down a precise moment when such a continuous injury begins.[3] The question of whether the resulting injury is covered under a given insurance policy, or, whether the insurance policy has been "triggered," vexes courts in the United States and the United Kingdom alike.[4]

---

*I am immensely grateful for the direction, wisdom and patience of Professor Leo P. Martinez, Albert Abramson Professor of Law, University of California, Hastings College of the Law.

1. Insurance Services Office, Commercial General Liability Coverage Form No. 00011207 at 1, *reprinted in* LEO P. MARTINEZ & DOUGLAS R. RICHMOND, CASES AND MATERIALS ON INSURANCE LAW 1007 (7th ed. 2013) (hereafter "MARTINEZ & RICHMOND").

2. MARTINEZ & RICHMOND, *supra* note 1, at 1020.

3. ROBERT H. JERRY & DOUGLAS R. RICHMOND, UNDERSTANDING INSURANCE LAW, 521-22 (4th ed. 2007) (hereafter "JERRY & RICHMOND"); MARTINEZ & RICHMOND, *supra* note 2, at 446-51 (citing *Montrose Chem. Corp. v. Admiral Ins. Co.*, 913 P.2d 878 (Cal. 1995)).

4. *See* JERRY & RICHMOND, *supra* note 3, at 523-25; MARTINEZ & RICHMOND, *supra* note 1, at 446-51 (citing *Montrose*, 913 P.2d 878); MALCOLM CLARKE, POLICIES AND PERCEPTIONS OF INSURANCE LAW IN THE TWENTY-FIRST CENTURY, 195-96 (2007) (hereafter

The California Supreme Court has noted that, while the term "trigger" is not found in the language of Commercial General Liability policies, "'trigger of coverage' is a term of convenience used to describe that which, under the specific terms of an insurance policy, must happen in the policy period in order for the potential of coverage to arise."[5]

In both the United States and the United Kingdom, courts employ four different trigger-of-coverage rules.[6] The "manifestation trigger" requires indemnity only for injuries that manifest themselves during the policy period.[7] The manifestation trigger provides narrow coverage and is problematic because it leaves insureds without claims in the future and shifts liability on to the most recent insurers.[8] The "exposure trigger" holds liable those insurers whose policies were in effect when the injured party was exposed to the harm.[9] While the exposure trigger is broader than the manifestation trigger, if injury results from exposure prior to the policy period, the insured might not receive the coverage she reasonably expected.[10] The "injury-in-fact trigger" provides coverage beginning when the injured demonstrates an actual injury.[11] This trigger can closely resemble the "continuous injury" trigger, but difficulties can arise in determining exactly when the injury arose.[12]

This discussion focuses on the fourth and broadest trigger: the "continuous injury trigger," also called the "triple trigger" or "multiple trigger."[13] The continuous injury trigger combines the first three triggers and holds liable any insurer whose policy was in effect during the progression of the injury.[14] Both the United States and the United Kingdom, albeit at different speeds and with different scopes, have employed a form of the "continuous injury trigger" to determine the "when" of insurance coverage for injury

---

"CLARKE").

5. *Montrose*, 913 P.2d at 881 n.2.
6. *Id.*
7. JERRY & RICHMOND, *supra* note 3, at 525.
8. *Id.* at 526.
9. *Id.*
10. *Id.*
11. *Montrose*, 913 P.2d at 894.
12. JERRY & RICHMOND, *supra* note 3, at 527.
13. *Id.* at 528.
14. *Id.*

or harm occurring over time.[15]

In the United Kingdom and the United States, while the legal bases for recognition of the continuous injury trigger differ, both jurisdictions are influenced by common themes that support recognition. First, because trigger of coverage issues are not well addressed in existing policy language, courts in both jurisdictions employ interpretive tools to assess trigger of coverage issues and to recognize the continuous injury trigger. The lack of pertinent language allows for considerable freedom of action by the courts. Second, as a close corollary, courts are concerned with maintaining the integrity of the insurance contract and ensuring that the insured receives the benefit of her bargain: indemnity. Third, the continuous injury trigger is particularly well-suited to satisfy both jurisdictions' need to address the unique problem of ongoing injury or harm insured by multiple insurers. The continuous injury trigger provides a workable solution to the problem of multiple insurer liability over a period of years without undermining the integrity of the insurance contract. Moreover, in the face of globalization, movement toward a more uniform approach to trigger-of-coverage issues provides predictability of outcomes for insureds and insurers alike; this sort of consistency is especially important because the type of trigger applied can have substantial implications for the extent of coverage.

When multiple insurance policies are at play, the exact time that coverage is triggered informs which parties are responsible for indemnifying the loss and thus informs the remedy available to the injured party.[16] When more than one insurer is liable for a given loss, a host of questions arise in the allocation of defense obligations and amount of indemnity.[17] In some jurisdictions in the United States, insureds can stack primary policies and aggregate the total policy limits to fully compensate the amount of the loss.[18] In the United Kingdom, it is less clear because recognition of the continuous injury trigger is recent. At the very least, insurers in the United Kingdom are jointly and severally liable for continuing injuries occurring during applicable policy periods.[19] In both jurisdictions, however,

15. CLARKE, *supra* note 4, at 195.

16. *Id.*

17. JERRY & RICHMOND, *supra* note 3, at 529.

18. MARTINEZ & RICHMOND, *supra* note 1, at 446-51.

19. CLARKE, *supra* note 4, at 196. Recognition of the continuous injury or "multiple" trigger in the United Kingdom, however, is, thus far, limited to continuous injury resulting

recognition of the continuous injury trigger protects the interest of the insured and works to maximize coverage.

This note is necessarily limited to examination of the factors contributing to the adoption of the continuous injury trigger of coverage. The ensuing discussion touches on insurer contribution issues only to demonstrate the scope of redress available to insureds to illustrate the importance of applying the correct trigger of coverage. The choice between triggers of coverage reflects the complicated nature of the problem of multiple insurers for a single continuous injury or harm. Moreover, given the recent recognition of the continuous injury trigger in the United Kingdom, confining this note to discussion of the continuous injury trigger aims to facilitate further academic discussion into corollary issues. Thus, this note does not address the details of "other insurance" clauses and horizontal or vertical exhaustion issues because these issues are more fully developed in the context of a continuous injury trigger.

This note has four sections. The first section offers a brief introduction to the importance of considering trigger-of-coverage issues comparatively. The second section discusses the legal bases of the continuous injury trigger as it was formulated in the United States. The third section recounts the recent and short history of the development of the multiple trigger for insurance coverage of asbestos-related claims in the United Kingdom. The final section analyzes the comparative differences between the United States and the United Kingdom, focusing on the effect of judicial approaches on insureds.

II. Globalization and Triggers of Coverage Issues

Comparing judicial approaches to trigger of coverage for progressive injury or damage cases is an important and worthy endeavor.[20] From a broad perspective, substantive comparative work

---

from asbestos exposure. *See* Bevan, *infra* note 86, at 217.

20. My comparative analysis is subject to the following disclaimer: cultural and legal systems are always more complicated, more nuanced, than our words can convey, but considering, analyzing, thinking about how legal systems working conjunctively and disjunctively, is a necessary endeavor. Recognizing bias is an important first step in communicating ideas respectfully. I am a United States citizen, who is a student of United States law and my aim here is to conduct a comparative analysis with a respectful and deferential tone. Moreover, due to my place in one of the countries occupying the "center" I may not be as well equipped to recognize what I overlook as those comparative scholars in

is increasingly important in a rapidly globalizing society.[21] According to some scholars, globalization has shifted the distribution of power among global actors; where the nation-states once controlled the markets, the markets now control the nation-states.[22] The insurance industry especially benefits from the diffusion of power once held firmly by the nation-state.[23] Indeed, in the face of this landscape, uniformity and clarity in insurance law is even more important as insureds and insurers alike look more toward market practices and less toward the nation-states. This prospect increases the need for robust academic discussion around global insurance law principles. This need is underscored by the scarcity of academic writing on substantive insurance law in the United Kingdom.[24]

These considerations are compounded by the nature of seemingly innocuous continuing injury and damage. These types of harms are difficult to detect and are so substantial that they are exactly the type of risk for which insureds seek indemnity. Trigger of coverage issues in the United States and United Kingdom, then, are no small matter. They directly determine whether the insured receives the benefit of her bargain.

III. United States

A. Legal Bases for Recognizing the Continuous Injury Trigger

The D.C. Circuit Court of Appeals was the first to recognize the continuous trigger in the United States.[25] In *Keene Corporation v. Insurance Co. of North America*, the D.C. Circuit considered when an injury resulting from asbestos exposure occurred.[26] The *Keene* court noted that, in asbestos-related diseases, the temporal gap

---

the "periphery." Any cultural or legal assumptions I make reflect an unconscious bias.

21. Ugo Mattei, *An Opportunity Not to Be Missed: The Future of Comparative Law in the United States*, 46 AM. J. COMP. L. 709, 710 (1998).

22. *See Id.*; *see also* SUSAN STRANGE, THE RETREAT OF THE STATE: THE DIFFUSION OF POWER IN THE WORLD ECONOMY (1996).

23. Strange, *supra* note 22, at 122.

24. Rob Merkin, Tort and Insurance: Some Insurance Law Perspectives, J. Prof. Negl. 194 (2010).

25. *Keene Corp. v. Ins. Co. of N. America*, 667 F.2d 1034, 1040 (D.C. Cir. 1981); James F. Hogg, *The Tale of a Tail*, 24 WM. MITCHELL L. REV. 515, 539 (1998) (stating that Keene was the first case to recognize the continuous trigger).

26. *Keene*, 667 F.2d at 1040.

between exposure and manifestation made the exact time of bodily injury prohibitively difficult to discern.[27] Thus, because "inhalation may continue through numerous policy periods, the disease may develop during subsequent policy periods, and manifestation may occur in yet another policy period . . . different insurers are likely to be on the risk at different points in the development of each plaintiff's disease."[28]

The *Keene* court further explained that, although insurance policies failed to directly address progressive injury, the policies must be interpreted in "a manner that is equitable and administratively feasible and that is consistent with insurance principles, insurance law, and the terms of the contracts themselves."[29] The court explained that comprehensive general liability insurance policies represent an exchange of uncertain loss for certain loss; the insurer assumes the insured's uncertain legal liability for the certain premium payment.[30] Thus, "at the heart of the transaction is the insured's purchase of certainty – a valuable commodity."[31]

With this framework in mind, the *Keene* court held that the language of commercial general liability policies was ambiguous and thus construed the policies as providing coverage in favor of the insured.[32] The court interpreted "'bodily injury' to mean any part of the single injurious process that asbestos-related diseases entail"; because "bodily injury" had occurred during all of the policy periods, the court held that "inhalation exposure, exposure in residence, and manifestation all trigger[ed] coverage."[33] Accordingly, the insurers whose policies were effective from the time of exposure through the time of manifestation were jointly and severally liable for the insured's loss.[34]

In the years following *Keene*, twelve states adopted the continuous injury trigger for determining coverage for progressive injury.[35] In *Montrose Chemical Corp. v. Admiral Insurance Co.*, the

27. *Id.*
28. *Id.*
29. *Id.* at 1041.
30. *Id.*
31. *Keene*, 667 F.2d. at 1041.
32. *Id.* at 1046.
33. *Id.* at 1046-47.
34. *Id.* at 1047-50.
35. As the California Supreme Court noted in Montrose, the states of New Jersey,

Supreme Court of California held that express policy language supported application of the continuous injury trigger. The insurance policy in *Montrose* defined "occurrence" as accidents including "continuous or repeated exposure to conditions."[36] The *Montrose* court held that this language "unambiguously distinguishe[d] between the causative event – an accident or 'continuous and repeated exposure to conditions' – and the resulting 'bodily injury or property damage.'"[37] Thus, bodily injuries that were alleged to progress from continuous exposure and that occurred during the policy period triggered coverage under the policy.[38]

Massachusetts, Pennsylvania, Maryland, Hawaii, Oregon and Delaware have all adopted the continuous injury trigger for cases of progressive injury or property damage. *Montrose*, 913 P.2d at 902 n. 22 (citing *Owens-Illinois, Inc. v. United Ins. Co.*, 650 A.2d 974, 995 (1994) (holding, unanimously that the continuous injury trigger is appropriate for asbestos related claims for both bodily injury and property damage); *Trustees of Tufts Univ. v. Commercial Union Ins. Co.*, 616 N.E.2d 68, 74 (1993) (rejecting the manifestation trigger and concluding that "coverage may be triggered before discovery or manifestation of the damage"); *J.H. France Refractories Co. v. Allstate Ins. Co.*, 626 A.2d 502, 507 (1993) (adopting the continuous injury trigger and noting that "it seems more accurate to regard all stages of the disease process as bodily injury sufficient to trigger the insurers' obligation to indemnify, as all phases independently meet the policy definition of bodily injury"); *Harford Cnty. v. Harford Mutual Ins. Co.*, 610 A.2d 286, 294-295 (1992) (rejecting use of only the manifestation trigger); *Sentinel Ins. Co. v. First Ins. Co.*, 875 P.2d 894, 917 (1994) (adopting the injury-in-fact trigger but holding that in cases of injury occurring over time where multiple insurers are on risk the continuous injury trigger is appropriate); *St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co.*, 870 P.2d 260, 264-265 (1994) (adopting a continuous injury trigger for a toxic waste spill); *Harleysville Mut. Ins. Co. v. Sussex Cnty.*, 831 F.Supp. 1111, 1124 (D.Del.1993) (applying Delaware law to hold that the continuous injury trigger is appropriate in toxic waste cases because like in asbestos cases it is "impossible to identify a precise point in time when property damage occurs from the leaching of pollutants")). In addition to the states cited by *Montrose* however, Illinois, Minnesota, and Wisconsin have adopted the continuous injury trigger. MARTINEZ & RICHMOND, *supra* note 2, at 470 (citing *U.S. Gypsum Co. v. Admiral Ins. Co.*, 643 N.E.2d 1226 (1994); *N. States Power Co. v. Fidelity & Cas. Co.*, 523 N.W.2d 657 (Minn. 1994); *Soc'y Ins. v. Town of Franklin,* 607 N.W.2d 342 (2000)).

36. *Montrose*, 913 P.2d at 890 (internal quotations omitted).

37. *Id.*

38. *Id.* The New Jersey Supreme Court explained that the "conceptual underpinning of the continuous-trigger theory, then, is that injury occurs during each phase of environmental contamination-exposure, exposure in residence (defined as further progression of injury even after exposure has ceased), and manifestation of disease." *Owens-Illinois*, 650 A.2d at 981.

B. Policy Considerations and Implications of Application

As the *Keene* court noted, the continuous injury trigger maximizes coverage and ensures the insured receives the benefit of her bargain.[39] While the goal of maximizing coverage is used by many courts to support adoption of the continuing injury trigger, it is not the exclusive policy justification.[40] Other courts have followed *Keene* in holding that Commercial General Liability Policy language is ambiguous in regard to progressive or continuing injury or damage and thus must always be construed in favor of the insured.[41]

By contrast, the *Montrose* court held that the continuous injury trigger gives effect to policy language chosen by the insurers in occurrence-based liability policies when an injury progresses over time.[42] The *Montrose* court explained that the standard form commercial general liability policy language "provides liability coverage for *damage or injury occurring during the policy period* which results from an accident, or from continuous or repeated exposure to injurious conditions."[43] Because the standard form commercial general liability policy language defines "occurrence" as including accidents that occur over time and an insurer "remains obligated to indemnify the insured for the entirety of the ensuing damage or injury," continuous injury or damage "throughout more than one policy period is potentially covered by all policies in effect during those periods."[44] Moreover, the California Supreme Court noted that adopting the continuous injury trigger for claims of continuous or progressively deteriorating damage or injury does not undermine the insurer's interest in predictability for underwriting practices.[45]

In *Owens-Illinois, Inc. v. United Ins. Co.*, the New Jersey Supreme Court appeared to apply the continuous injury trigger out of

---

39. *Keene*, 667 F.2d at 1041.

40. James M. Fischer, *Insurance Coverage for Mass Exposure Tort Claims: The Debate over the Appropriate Trigger Rule*, 45 DRAKE L. REV. 625, 648-50 (1997).

41. *Id.* at 649 (citing AC&S, Inc. v. Aetna Cas. & Sur. Co., 764 F.2d 968, 972 (3d Cir. 1985)).

42. *Montrose*, 913 P.2d at 902.

43. *Id.* at 901.

44. *Id.* at 901-02.

45. *Id.* at 902.

necessity.[46] The *Owens-Illinois* court reasoned that the nature of mass tort exposures necessitates the use of the continuous injury trigger because to assign each tort claim to a particular policy would be impractical.[47] The *Owens-Illinois* court explained that "concepts of legal causation were developed in an age of Newtonian physics, not of molecular biology."[48] If it were possible to know the exact moment the injury occurred, the court "might be more confident that occurrence-causing damages had taken place during a particular policy period. The limitations of science in that respect only compound the limitations of law . . . [m]ass-exposure toxic-tort cases have simply exceeded the capacity of conventional models of judicial response."[49] The continuous injury trigger responds to this intersection of legal and scientific limitation by providing a workable mechanism that provides insureds and tort victims adequate redress.[50]

Moreover, the continuous injury trigger is thought to serve the competing interests of the insured and insurer by providing predictability to insurers and indemnification to insureds.[51] Under the *Owens-Illinois* view, the continuous injury trigger's unique ability to respond to legal and scientific limitations surrounding continuous injury or harm provides consistency otherwise lacking in other courts' approaches to continuous injury.[52] The *Owens-Illinois* court rejected the *Keene* court's rationale of maximizing coverage as adequate justification for use of the continuous injury trigger, stating that "[a] more consistent principle is required."[53] The continuous injury trigger, viewed as a necessary solution to the particular trigger of coverage issues resulting from a single continuous injury insured by multiple insurers, provides consistency to insureds and insurers alike.[54]

Whatever its justification, the choice to employ the continuous

---

46. *Owens-Illinois*, 650 A.2d at 985.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. See *Owens-Illinois, Inc. v. United Ins. Co.*, 625 A.2d 1, 25 (App. Div. 1993) rev'd on other grounds, 650 A.2d 974 (1994); Douglas R. Richmond, *Issues and Problems in "Other Insurance," Multiple Insurance, and Self-Insurance*, 22 PEPP. L. REV. 1373, 1432 (1995).

52. *Owens-Illinois*, 650 A.2d at 981.

53. *Id.*

54. *See Id.*

injury trigger has substantial implications.[55] In the United States, as the *Keene* court observed, application of the continuous injury trigger maximizes coverage for the insured.[56] When multiple insurers are liable for a given injury, the insured's redress varies depending on the jurisdiction.[57] In some jurisdictions, the insurers are jointly and severally liable up to the insurers' respective policy limits subject to apportionment between the insurers at a later date.[58] In other jurisdictions, insureds are permitted to "stack" the policies and aggregate the policy limits to reach full indemnification.[59] Accordingly, the application of the continuous injury trigger greatly expands the resources available to indemnify the insured and compensate the injured party.

Courts in the United States have thus adopted the continuous injury trigger in an effort to maximize coverage for the insured and provide a workable solution to the problems that arise when multiple insurers are on risk for a single continuing injury. The continuous injury trigger honors the purposes for which parties to an insurance policy contract without doing violence to policy language.

IV. The United Kingdom

A. Legal Bases for Recognizing the Multiple Trigger

In the liability insurance context, courts in the United Kingdom have also tackled the question of when coverage is triggered for an injury resulting from asbestos exposure that is sustained over multiple years and policies.[60] Beginning in 2003, courts in the United

---

55. *See* JERRY & RICHMOND, *supra* note 3, at 523-25; MARTINEZ & RICHMOND, *supra* note 1, at 446-51 (citing *Montrose*, 913 P.2d at 890).

56. *See* Nicholas R. Andrea, *Exposure, Manifestation of Loss, Injury-in-Fact, Continuous Trigger: The Insurance Coverage Quagmire*, 21 PEPP. L. REV. 813, 852 (1994).

57. *See Id.*

58. Richmond, *supra* note 51, at 1436-38; *but see Insurance Co. of N. Am. v. Forty-Eight Insulations*, 633 F.2d 1212, 1226 n. 28 (6th Cir. 1980) (rejecting joint and several liability).

59. *See* LEO P. MARTINEZ, THE ALLOCATION OF COSTS IN MULTI-INSURER CASES SPANNING MULTIPLE YEARS: THE DECEPTIVELY SIMPLE PROBLEM OF DEFENSE COSTS, NEW APPLEMAN ON INSURANCE: CURRENT CRITICAL ISSUES IN INSURANCE LAW 53 (Fall 2012); MARTINEZ & RICHMOND, *supra* note 2, at 446-51; *State v. Cont'l Ins. Co.*, 55 Cal.4th 186, 192 (2012).

60. CLARKE, *supra* note 4, at 195.

Kingdom have moved toward the adoption of a "triple trigger" or "multiple trigger" rule for causation in tort actions.[61] In the United Kingdom, the "multiple trigger" provides indemnity from any policy in effect at the time of initial exposure, during exposure, and at the time of manifestation.[62]

The House of Lords in *Fairchild v. Glenhaven Funeral Services Limited* began the United Kingdom's move toward recognition of the "multiple trigger."[63] In *Fairchild*, the House of Lords considered which defendants were liable for exposing the injured parties to asbestos when exposure happened over a period of years and by multiple defendants.[64] The court held that, where employers cannot identify the period during which exposure to asbestos occurred, the causation element is satisfied if the employer materially increased the risk of contracting the mesothelioma.[65]

In 2006, the Supreme Court of the United Kingdom – previously the House of Lords – reexamined Fairchild in *Barker v. Corus*.[66] Subsequently in 2011, the Court expanded on this line of cases in *Sienkiewicz v. Greif*.[67] In *Barker*, a majority held that an employer was not jointly and severally liable for exposing an employee to asbestos; rather, the *Barker* majority held that liability between employers should be apportioned according to that employer's contribution to the risk.[68] In other words, the employer's liability was limited to the amount of damage the employer caused. Lord Roger dissented, arguing that the appropriate test for causation should be broad rather than a strict but-for test and should thus impose joint and several liability rather than apportioned liability.[69]

Parliament, however, swiftly passed the Compensation Act 2006 and rejected apportionment of liability under *Barker*.[70] The Compensation Act 2006 held employers jointly and severally liable

---

61. *Id.*
62. *Id.*
63. [2002] UKHL 22, [2003] 1 A.C. (H.L.) 32.
64. *Id.* at 35-36.
65. *Id.* at 32.
66. [2006] UKHL 20, [2006] 2 A.C. 572.
67. [2011] UKSC 10, [2011] 2 A.C. 229.
68. *Id.* at 235.
69. *Id.* at 285-86.
70. CLARKE, *supra* note 4, at 196.

for damages and provided that employers should work out apportionment and contribution later.[71] Parliament's passage of the act explicitly endorsed Lord Roger's dissent from *Barker,* which stated one need only "prove that the risk [of contracting mesothelioma] has been increased" to satisfy tort causation.[72]

In 2012, the Supreme Court of the United Kingdom considered the applicability of *Fairchild* and its progeny to insurer liability in *Durham v. BAI (Run off) Ltd.*, the so-called "Trigger Litigation."[73] The Trigger Litigation addressed two specific issues.[74] First, the Supreme Court considered if, under the applicable policy language, the injury had been "sustained" or "contracted" upon exposure to asbestos or if the language necessarily limited coverage to the time when mesothelioma was first manifested.[75] Second, the Supreme Court considered whether the *Fairchild* principle could be applied to the determination of whether the injury was "sustained" or "contracted" during the policy period – that is, whether the causation element of the tort leading to liability was satisfied.[76]

On the first issue, the Supreme Court unanimously held that the injury was "sustained" or "contracted" upon exposure to asbestos and not only when the injury manifested.[77] The Court explained that interpreting injury to occur upon exposure gave effect to the commercial purpose of the policy and indemnified the insured for conduct during the policy period.[78]

In arriving at this conclusion, the Supreme Court relied on contract interpretation principles it had set forth in *Rainy Sky SA v. Kookmin Bank.*[79] In *Rainy Sky*, Lord Clarke held that the aim of interpreting a provision in a contract is to give effect to the language the parties used by "ascertaining what a reasonable person would have understood the parties to have meant."[80] When facing more

71. *Id.*

72. Barker, *supra* note 66 at 574.

73. [2012] UKSC 14.

74. *Id.* at [3].

75. *Id.*

76. *Id.*

77. *Id.* at [73].

78. *Id.* at [74].

79. Gary Meggitt, *The "Rock of Uncertainty": Mesothelioma, Insurers and the Courts*, J.B.L. 2013, 6, 563-584, 573 (2013); Rainy Sky SA v. Kookmin Bank, [2011] UKSC 50 [14].

80. Rainy Sky SA v. Kookmin Bank, [2011] UKSC 50.

than one interpretation, it is "generally appropriate to adopt the interpretation which is most consistent with business common sense."[81] Thus, the Trigger Litigation court held that to interpret "sustained" or "contracted" as referring only to when an injury becomes manifest would flout the purpose of the insurance policy because it would render the policyholder underinsured.[82]

The Supreme Court was divided on the second issue.[83] Lord Mance gave the leading opinion and held that "each person who has, in breach of duty, been responsible for exposing the victim to a significant quantity of asbestos dust and thus creating a 'material increase in risk' of the victim contracting the disease will be held to be jointly and severally liable in respect of the disease."[84] Lord Mance concluded that "for the purposes of the insurances [sic], liability for mesothelioma following upon exposure to asbestos created during an insurance period involves a sufficient 'weak' or 'broad' causal link for the disease to be regarded as 'caused' within the insurance period."[85]

Like the *Owens-Illinois* court in the United States, Lord Mance justified his position, in part, because of necessity.[86] According to Lord Mance, because so little is known about the progression of asbestos exposure into mesothelioma, the weak causal link ensures that victims are compensated.[87] Lord Mance further observed that the purpose of the liability insurance contract was to "respond to whatever liability the insured employers might be held to incur within the scope of the risks insured and within the period in respect of which they were insured."[88] Thus, allowing an insurer to escape liability because the employer failed to establish but-for causation during the policy period would undermine the purpose of the liability insurance contract.[89] As one scholar noted, the Trigger Litigation brings the United Kingdom "closer to the 'multiple trigger' concept

81. *Id.* at [30].

82. [2012] UKSC 14 [50]; Meggitt, *supra* note 79, at 573.

83. BAI (Run Off) Ltd. v. Durham, [2012] UKSC 14.

84. *Id.* at [5].

85. *Id.* at [73].

86. *Id.*; Nicholas Bevan, *A Return to Common Sense*, J.P.I. LAW, 4, 209-218, 216 (2012).

87. BAI (Run Off) Ltd. v. Durham, [2012] UKSC 14 [73-74]; Bevan, *supra* note 86, at 217.

88. BAI (Run Off) Ltd. v. Durham, [2012] UKSC 14 [69]; Meggitt, *supra* note 79, at 577.

89. BAI (Run Off) Ltd. v. Durham, [2012] UKSC 14 [69]; Meggitt, *supra* note 79, at 578.

applied in the United States."[90]

B. Policy Considerations and Implications of Application

In the Trigger Litigation, the Supreme Court had little trouble with interpreting the insurance contracts as providing coverage from exposure through manifestation.[91] The Court's desire to give effect to the insurance contract's commercial purpose apparently serves two ends. First, the Trigger Litigation mirrors the *Keene* court's desire to ground coverage triggers in the fundamental purpose of insurance contracts. Second, the Supreme Court's holding that insurers are jointly and severally liable for asbestos-related claims maximizes coverage for the insured.[92]

The Supreme Court's treatment of the second issue, causation, presented a more difficult question.[93] The Court expressly named necessity and honoring the purpose of purchasing indemnity as justifications for adopting a broader causation rule in mesothelioma cases.[94] The Court's adoption of the broad causal link, however, might also be explained by the fact that defendants in asbestos related cases tend to be insured.[95] One Judge, Lord Denning, in a rare acknowledgement of the influence of the existence of insurance on tort decisions, explained that courts "would not find negligence so readily . . . except on the footing that the damages are to be borne . . . by the insurance company."[96]

The implications of recognizing the multiple trigger in the United Kingdom are less clear. Because such recognition is recent in the United Kingdom, it is unclear whether courts will allow insureds to stack policies and aggregate policy limits. Joint and several liability favors insureds because they are allowed multiple avenues

---

90. Bevan, *supra* note 86, at 217.

91. See Zurich Insurance PLC v. International Energy Group Ltd., [2015] UKSC 33 (analyzing the "Trigger" litigation).

92. BAI (Run Off) Ltd. v. Durham, [2012] UKSC 14.

93. *See* Zurich Insurance PLC v. International Energy Group Ltd., [2015] UKSC 33.

94. BAI (Run Off) Ltd. v. Durham, [2012] UKSC 14 [69].

95. Richard Lewis, *The Relationship Between Tort Law and Insurance in the United Kingdom and Wales*, *in* TORT AND INSURANCE LAW 61-63 (Gehard Wagner & Tom Baker, eds. 2005).

96. *Id.* at 62 (quoting Morris v. Ford Motor Co. [1973] Q.B. 792 at 798 (Eng.)).

for redress.[97] Indeed, the Trigger Litigation and Compensation Act 2006's adoption of joint and several liability falls in line with the United Kingdom's well-established law on double insurance. Under the United Kingdom's double insurance rules, insurers are jointly and severally liable for injuries for which they are on risk during overlapping policy periods.[98] Each insurer is liable up to the amount of the policy limit, but the insured may not recover more than the total amount of the loss.[99] Each insurer's share of the loss is later worked out among the insurers whose policies are triggered.[100] Nothing in the United Kingdom's law on double insurance suggests that insureds will be barred from stacking or be anything but fully indemnified.[101] Accordingly, although the multiple trigger is thus far limited to asbestos exposure cases, full indemnity for insureds and full compensation for victims is favored.

The United Kingdom has recognized the multiple trigger to address the problem of multiple insurers on risk for a continuous injury, to maximize compensation to victims of asbestos exposure. This recognition, however, has not come at the expense of fidelity to principles of contract interpretation, but rather the multiple trigger is recognized in in an effort to give effect to the purpose of insurance contracts: indemnity. The United Kingdom's recognition of the multiple trigger, then, appears to be on a similar trajectory followed by the United States. At very least, nothing in the United Kingdom's courts' actions suggests a diversion from this path.

V. Comparative Analysis

While both the United States and the United Kingdom recognize a variation of the continuous injury trigger for injury sustained over multiple insurance policies, the countries' approaches differ in significant ways. First, and aside from the fact that the United Kingdom's recognition of the multiple trigger is more recent,[102] the

97. MACGILLIVRAY ON INSURANCE LAW 573 (Nicholas Legh Jones, et al., eds., 9th ed. 1997).

98. *Id.*

99. *Id.*

100. *Id.* at 588.

101. *See* Roger Kay, *Recent Developments in Insurance Law*, COVENTRY L.J. 2003, 8(2), 26-30, 27-29; MACGILLIVRAY *supra* note 97, at 573-97.

102. Compare dates of decisions for BAI (Run Off) Ltd. v. Durham, [2012] UKSC 14

United Kingdom's recognition of the trigger is significantly more limited than in the United States.[103] In the United Kingdom, recognition of a multiple trigger is thus far limited to asbestos exposure claims.[104] In the United States, by contrast, the continuous injury trigger has been applied to cases involving situations ranging from property encroachment to leaking swimming pools to long-term environmental harm.[105]

Moreover, the countries' respective approaches for recognizing the trigger differ significantly. The United Kingdom has no apparent difficulty interpreting policy language to authorize application of the multiple trigger; instead, it has more difficulty conforming the approach to traditional tort causation principles.[106] In the United States, by contrast, jurisdictions that recognize the continuous injury trigger base application squarely on contract principles.[107] This distinction may be trivial, but it may signal a general reluctance in the United Kingdom to broaden the scope of risks for which insureds may be liable.

The United Kingdom and the United States cite, however, similar policy justifications for applying the continuous injury trigger.[108] Both countries are concerned with honoring the purpose of

---

and *Keene Corp. v. Ins. Co. of N. Am.*, 667 F.2d 1034, (D.C. Cir. 1981); It should be reiterated that the United States' recognition of the continuous injury trigger, while older, is by no means the majority rule in the United States. *See supra*, note 34.

103. Bevan, *supra* note 86, at 217.

104. *Id.*

105. *Borg v. Transamerica Ins. Co.*, 47 Cal.App.4th 448, 461 (1996) (applying the continuous injury trigger to trigger to property damage caused by structural encroachment from the insured's property); *California Union Ins. Co. v. Landmark Ins. Co.*, 145 Cal.App.3d 462, 476 (1983) (holding that where a swimming pool leak caused property damage spanning two policy periods both insurers were jointly and severally liable for the damage caused); *U.S. Gypsum Co. v. Admiral Ins. Co.*, 268 Ill.App.3d 598, 646 (1994) (applying the continuous injury trigger to property damage caused by continued exposure to asbestos fibers); *State v. Cont'l Ins. Co.*, 281 P.3d 1000, 1002 (Cal. 2012), as modified (Sept. 19, 2012) (applying the continuous injury trigger to toxic waste contamination occurring over a twelve-year period).

106. *See* Zurich Insurance PLC v. International Energy Group Ltd., [2015] UKSC 33 (analyzing the "Trigger" litigation).

107. *See Montrose*, 913 P.2d at 890; James M. Fischer, *Insurance Coverage for Mass Exposure Tort Claims: The Debate over the Appropriate Trigger Rule*, 45 DRAKE L. REV. 625, 649 (1997) (citing AC&S, *Inc. v. Aetna Cas. & Sur. Co.*, 764 F.2d 968, 972 (3d Cir. 1985)).

108. *See* James M. Fischer, *Insurance Coverage for Mass Exposure Tort Claims: The Debate over the Appropriate Trigger Rule*, 45 DRAKE L. REV. 625, 648-50 (1997); BAI

the insurance contract: the insured's indemnity.[109] Both countries also cite necessity as a compelling reason for adopting the multiple trigger.[110] Thus, both countries are concerned with the scope of indemnity available to the insured and, by extension, the damages available to the victim of injury or property damage.

The extent of indemnity in both the United States and the United Kingdom remains unclear. In the United States, the question of apportionment of indemnity among insurers is complicated.[111] And, while some courts in the United States permit the insured to stack insurance policies to fully indemnify the loss from continuing injury or damage, stacking is jurisdiction dependent.[112] The United Kingdom applies a joint and several liability approach, but it has yet to consider whether stacking is implicit under the country's double insurance rules. Thus, while the continuous injury or multiple trigger maximizes coverage for the insured, it is not clear in either the United States or the United Kingdom whether this will always lead to complete indemnification.

Moreover, it is unclear whether the United Kingdom will continue to limit the multiple trigger's application to asbestos cases. Prolonged limitation will adversely affect insureds. Lord Mance's observation in the Trigger Litigation – that limiting liability for asbestos exposure to cases where but-for causation can be proven would undermine the purpose of insurance contracts – suggests the United Kingdom's recognition of the multiple trigger will not be limited to asbestos cases indefinitely.[113] Indeed, such a limitation in the context of continuous injury over multiple policy periods would undermine the insurance contract's ability to "respond to whatever liability the insured employers might be held to incur within the scope of the risks insured and within the period in respect of which they were insured."[114] Like the United States, the United Kingdom

---

(Run Off) Ltd. v. Durham, [2012] UKSC 14; Meggitt, *supra* note 79, at 216.

109. *See Keene*, 667 F.2d at 1041; BAI (Run Off) Ltd. v. Durham, [2012] UKSC 14; Meggitt, *supra* note 79, at 216.

110. *Owens-Illinois*, 650 A.2d at 985; *See* Durham v BAI (Run Off) Ltd, [2012] UKSC 14; Meggitt, *supra* note 79, at 216.

111. LEO P. MARTINEZ, THE ALLOCATION OF COSTS IN MULTI-INSURER CASES SPANNING MULTIPLE YEARS: THE DECEPTIVELY SIMPLE PROBLEM OF DEFENSE COSTS, NEW APPLEMAN ON INSURANCE: CURRENT CRITICAL ISSUES IN INSURANCE LAW 53 (Fall 2012).

112. MARTINEZ & RICHMOND, *supra* note 1, at 444.

113. BAI (Run Off) Ltd. v. Durham, [2012] UKSC 14; Meggitt, *supra* note 79, at 577.

114. BAI (Run Off) Ltd. v. Durham [2012] UKSC 14] [69]; Meggitt, *supra* note 79, at 577.

seems to be approaching broader recognition of the multiple trigger.

VI. Conclusion

Despite the temporal difference and thus the difference in scope of recognition of the continuous injury trigger, both the United States and the United Kingdom have cited similar justifications for their applications. Courts in both jurisdictions have employed the continuous injury trigger out of "necessity" to address the problem of multiple insurers for a single continuous injury. Courts in both jurisdictions have used contract interpretation principles to apply the continuous injury trigger to multiple insurers on risk for a continuous injury occurring over a number of years. Finally, courts in the United Kingdom and the United States have applied the continuous injury trigger to give effect to the purpose of insurance contracts and affirm compensation for the insured.

As the foregoing reflects, the current state of the law on the continuous injury trigger in the United States and the United Kingdom is not clear, uniform, or comprehensive. Against the landscape of our globalizing world, moving toward uniformity and clarity in particularly complicated areas of the law is important. As the world gets smaller and insurance transactions increasingly occur across borders, insurance companies and insureds alike benefit from clear insurance law principles. Perhaps chief among these principals are those guiding the "when" of indemnification obligations. The "when" of coverage in the context of continuous injury informs the scope and extent of compensation available to the insured. Thus, the application of triggers of coverage goes to the heart of the liability insurance transaction: "the insured's purchase of certainty – a valuable commodity."[115]

115. *Keene*, 667 F.2d at 1041.

HASTINGS INTERNATIONAL AND COMPARATIVE LAW *Review*

Volume 39, No. 2 — SUMMER 2016

UNIVERSITY OF CALIFORNIA
Hastings College of the Law

HASTINGS INTERNATIONAL AND COMPARATIVE LAW *REVIEW*

VOL. 39 **SUMMER 2016** **NO. 2**

Published two times a year by the students of the University of California, Hastings College of the Law

The *Hastings International and Comparative Law Review* (ISSN 0149-9246) is published in Winter, and Summer by the University of California, Hastings College of the Law, 200 McAllister Street, San Francisco, California 94102-4978. The subscription price is $55.00 per year (US$65.00 foreign). Special rates are available to subscription agencies. If notice of termination is not received before the expiration of a subscription, it will be renewed automatically. Claims for nonreceipt of issues should be made in writing within 90 days of publication; overseas claims within 180 days. Thereafter, the single issue rate will be charged for replacement. Submit all claims to scholarp@uchastings.edu.

Single issues of current and previous volumes are available from the *Law Review* at $45.00 per copy (US$50.00 foreign).

Business and editorial mailing address: 200 McAllister Street, San Francisco, CA 94102-4978. Editorial office located at 100 McAllister Street. Telephone number: (415) 581-8963. Fax number: (415) 581-8974. Internet E-mail address: hiclr@uchastings.edu. Internet Site: http://www.uchastings.edu/hiclr/index.html.

Citations generally conform to *A Uniform System of Citation* (20th ed., 2015), copyright by the *Columbia, Harvard,* and *University of Pennsylvania Law Reviews* and the *Yale Law Journal*.

The *Law Review* is indexed in *ABC POL SCI—A Bibliography of Contents: Political Science & Government, Contents of Current Legal Periodicals, Current Law Index, Index to Legal Periodicals, Legal Contents, Legal Resource Index,* Westlaw and Lexis.

The *Law Review* gladly considers unsolicited manuscripts and short commentaries on recent legal developments for publication. The *Law Review* generally does not publish manuscripts from law students other than students of Hastings College of the Law. Manuscripts should be double or triple spaced and typewritten on 8.5" × 11" files, with all footnotes at the end of the manuscript. Citations must conform to *A Uniform System of Citation* (20th ed. 2015). The manuscript should be accompanied by a resume. The *Law Review* will only return manuscripts for which the author provides a self-addressed, postage-paid envelope.

HASTINGS COLLEGE OF THE LAW

DIRECTORS

THOMAS GEDE, B.A., J.D., Chair ..... *Davis*
CARL W. "CHIP" ROBERTSON, B.A., M.B.A., J.D., Vice Chair ..... *Los Angeles*
DONALD BRADLEY, B.A., J.D., LL.M. ..... *Pleasanton*
TINA COMBS, B.A., J.D. ..... *Oakland*
MAUREEN E. CORCORAN, B.A., M.A., J.D. ..... *San Francisco*
MARCI DRAGUN, B.A., J.D. ..... *Burlingame*
CARIN T. FUJISAKI, B.A., J.D. ..... *Walnut Creek*
CLAES H. LEWENHAUPT, B.A., LL.M., J.D.* ..... *Fort Irwin*
MARY NOEL PEPYS, B.A., J.D. ..... *San Francisco*
BRUCE L. SIMON, A.B., J.D. ..... *Hillsborough*
SANDI THOMPSON, B.A., J.D. ..... *Woodside*

**Great-grandson of Hon. Serranus Clinton Hastings, Founder of Hastings College of the Law*

DIRECTORS EMERITI

MARVIN R. BAXTER, B.A., J.D. ..... *Fresno*
WILLIAM R. CHANNELL, B.A., J.D., Retired Justice ..... *Lafayette*
JOSEPH W. COTCHETT, B.S., LL.B. ..... *Hillsborough*
MYRON E. ETIENNE, JR., B.S., J.D. .....
LOIS HAIGHT HERRINGTON, A.B., J.D. ..... *Walnut Creek*
MAX K. JAMISON, B.A., J.D. .....
JOHN T. KNOX, A.B., J.D. ..... *Richmond*
JAMES E. MAHONEY, B.A., J.D. ..... *Los Angeles*
BRIAN D. MONAGHAN, B.S., J.D. ..... *San Diego*
CHARLENE PADOVANI MITCHELL, B.A., M.A., J.D. ..... *San Francisco*
JOHN A. SPROUL, A.B., J.D. ..... *El Cerrito*

ADMINISTRATION AND INSTRUCTION

DAVID L. FAIGMAN, B.A., M.A., J.D. ..... INTERIM *Chancellor and Dean and John F. Digardi Distinguished Professor of Law*
ELIZABETH HILLMAN, B.S.E.E., J.D., PH.D. ..... *Provost and Academic Dean, and* INTERIM *Associate Dean for Library Services, and Professor of Law*
JEFFREY A. LEFSTIN, Sc.B., J.D., Ph.D. ..... *Associate Academic Dean and Professor of Law*
ELISE K. TRAYNUM, B.A., J.D. ..... *General Counsel and Secretary of the Board of Directors*
DAVID SEWARD, B.A., M.B.A. ..... *Chief Financial Officer*
GINA BARNETT, B.A., M.A.. ..... *Registrar, Director of Institutional Research*
DEBORAH TRAN, B.A., M.A. ..... *Controller*
RICHARD A. BOSWELL, B.A., J.D. ..... *Associate Dean for Global Programs and Professor of Law*
REUEL SCHILLER, B.A., J.D., PH.D. ..... *Associate Dean for Research and Professor of Law*
NANCY STUART, B.S., J.D. ..... *Associate Dean for Experiential Learning and Clinical Professor of Law*
RUPA BHANDARI, J.D.. ..... *Assistant Dean of Student Services*
TONI YOUNG, B.A., J.D. ..... *Assistant Dean of Legal Research & Writing, and Moot Court*
SARI ZIMMERMAN, B.S.F.S., J.D. ..... *Assistant Dean for the Office of Career and Professional Development*
VICTOR HO ..... *Director of Financial Aid*
STEVEN BONORRIS ..... *Interim Executive Director of the Center for State and Local Government Law and the Public Law Research Institute*
ROBIN FELDMAN, B.A., J.D. ..... *Director of the Law and Bioscience Project and Professor of Law*
MIYE GOISHI, B.A., J.D. ..... *Director of the Civil Justice Clinic and Clinical Professor of Law*
JAN JEMISON, B.S., M.B.A., J.D. ..... *Director of the Legal Education Opportunity Program and Adjunct Assistant Professor of Law*
JAIME KING, B.A., J.D., Ph.D. ..... *Director of UCSF/UC Hastings Consortium on Law, Science & Health Policy*
KAREN B. MUSALO, B.A., J.D. ..... *Director of the Center for Gender and Refugee Studies, and Director of the Refugee and Human Rights Clinic, and Clinical Professor of Law*
LISA NOSHAY PETRO, B.P.S., J.D. ..... *Director of the Disability Resource Program*
ROBERT S. PETTIT ..... *Executive Director of Human Resources*

SHEILA R. PURCELL, B.A., J.D. ..... *Director of the Center for Negotiation and Dispute Resolution, and Clinical Professor of Law*
ALEX A. G. SHAPIRO, M.F.A. ..... *Director of Exernal Relations*
JOAN C. WILLIAMS, B.A., M.C.P., J.D. ..... *Distinguished Professor of Law and Director of the Center for Worklife Law*
LAURIE ZIMET, B.A., J.D. ..... *Director of the Academic Support Program*

PROFESSORS EMERITI OF LAW

MARK N. AARONSON, A.B., M.A., J.D., PH.D. ..... *Professor of Law, Emeritus*
MARGRETH BARRETT, B.A., M.A., J.D. ..... *Professor of Law, Emeritus*
GAIL BOREMAN BIRD, A.B., J.D. ..... *Professor of Law, Emeritus*
GEORGE E. BISHARAT, A.B., M.A., PH.D., J.D. ..... *Professor of Law, Emeritus*
MARSHA N. COHEN, B.A., J.D. ..... *Hon. Raymond L. Sullivan Professor of Law, Emeritus*
RICHARD B. CUNNINGHAM, B.S., J.D., LL.M. ..... *Professor of Law, Emeritus*
BRIAN GRAY, B.A., J.D. ..... *Professor of Law, Emeritus*
JOSEPH GRODIN, B.A., J.D., PH.D. ..... *Professor of Law, Emeritus*
GEOFFREY C. HAZARD, JR., B.A., LL.B. ..... *Thomas E. Miller Distinguished Professor of Law, Emeritus*
WILLIAM T. HUTTON, A.B., J.D., LL.M. ..... *Professor of Law, Emeritus*
DAVID J. JUNG, A.B., J.D. ..... *Professor of Law, Emeritus*
MARY KAY KANE, A.B., J.D. ..... *Emerita Dean and Chancellor, and Distinguished Professor of Law, Emeritus*
CHARLES L. KNAPP, B.A., J.D. ..... *Professor of Law, Emeritus*
FREDERICK LAMBERT, A.B., J.D. ..... *Professor of Law, Emeritus*
JOHN LESHY, A.B., J.D. ..... *Professor of Real Property Law, Emeritus*
DAVID I. LEVINE, A.B., J.D. ..... *Professor of Law, Emeritus*
STEPHEN A. LIND, A.B., J.D., LL.M. ..... *Professor of Law, Emeritus*
JOHN MALONE, B.S., LL.B. ..... *Lecturer in Law, Emeritus*
SHAUNA I. MARSHALL, A.B., J.D., J.S.M. ..... *Professor of Law, Emeritus*
CALVIN R. MASSEY, A.B., M.B.A., J.D. ..... *Professor of Law, Emeritus*
JAMES R. MCCALL, B.A., J.D. ..... *Professor of Law, Emeritus*
BEATRICE MOULTON, J.D., LL.M. ..... *Professor of Law, Emeritus*
MELISSA LEE NELKEN, B.A., M.A., J.D. ..... *Professor of Law, Emeritus*
JENNI PARRISH, B.A., M.L.S., J.D. ..... *Professor of Law, Emeritus*
STEPHEN SCHWARZ, A.B., J.D. ..... *Professor of Law, Emeritus*
HON. WILLIAM W. SCHWARZER, A.B., LL.B. ..... *Professor of Law, Emeritus*
KEVIN H. TIERNEY, A.B., M.A., LL.B., LL.M. ..... *Professor of Law, Emeritus*
GORDON VAN KESSEL, A.B., LL.B. ..... *Professor of Law, Emeritus*
WILLIAM K. S. WANG, B.A., J.D. ..... *Professor of Law, Emeritus*
C. KEITH WINGATE, B.S., J.D. ..... *Professor of Law, Emeritus*

PROFESSORS OF LAW

ALICE ARMITAGE, A.B., M.A., J.D. ..... *Associate Professor of Law*
HADAR AVIRAM, LL.B., M.A., J.D. ..... *Professor of Law*
ALINA BALL, J.D. ..... *Associate Professor of Law*
DANA BELDIMAN, M.A., J.D., LL.M. ..... *Professor in Residence*
AARON BELKIN, B.A., Ph.D. ..... *Visiting Professor of Law*
KATE BLOCH, B.A., M.A., J.D. ..... *Professor of Law*
RICHARD A. BOSWELL, B.A., J.D. ..... *Associate Academic Dean for Global Programs and Professor of Law*
ABRAHAM CABLE, B.A., J.D. ..... *Associate Professor of Law*
JO CARRILLO, B.A., J.D., J.S.D. ..... *Professor of Law*
PAOLO CECCHI DIMEGLIO, J.D., LL.M., MAGISTÈRE-DJCE, PH.D. ..... *Permanent Affiliated Scholar*
JOHN CRAWFORD, B.A., M.A., J.D. ..... *Associate Professor of Law*
A. GREGORY COCHRAN, B.A., M.D. ..... *Associate Director, UCSF/UC Hastings Health Policy and Law Degree Program, and Lecturer in Law*
BEN DEPOORTER, M.A., J.D., PH.D., J.S.D., LL.M. ..... *Professor of Law*
JOHN L. DIAMOND, B.A., J.D. ..... *Professor of Law*
REZA DBADJ, J.D. ..... *Visiting Professor of Law*
SCOTT DODSON, B.A., J.D. ..... *Professor of Law*
VEENA DUBAL Ph.D., J.D. ..... *Associate Professor of Law*
JENNIFER TEMPLETON DUNN, B.A., J.D. ..... *Lecturer in Law*
JARED ELLIAS, A.B., J.D. ..... *Associate Professor of Law*

DAVID L. FAIGMAN, B.A., M.A., J.D. ..... *John F. Digardi Distinguished Professor of Law*
LISA FAIGMAN, B.S., J.D. ..... *Lecturer in Law*
ROBIN FELDMAN, B.A., J.D. ..... *Director of the Law and Bioscience Project and Professor of Law*
HEATHER FIELD, B.S., J.D. ..... *Professor of Law*
CLARK FRESHMAN, B.A., M.A., J.D. ..... *Professor of Law*
AHMED GHAPPOUR, J.D. ..... *Visiting Assistant Professor of Law*
MIYE GOISHI, B.A., J.D. ..... *Clinical Professor of Law and Director of the Civil Justice Clinic*
KEITH J. HAND, B.A., M.A., J.D. ..... *Associate Professor of Law*
ELIZABETH HILLMAN, B.S.E.E., J.D., PH.D. ..... *Provost and Academic Dean, and Professor of Law*
CAROL IZUMI ..... *Clinical Professor of Law*
PETER KAMMINGA, LL.B., J.D., LL.M., PH.D. ..... *Permanent Affiliated Scholar*
PETER KEANE ..... *Visiting Professor of Law*
CHIMENE KEITNER, A.B., D.PHIL., J.D. ..... *Professor of Law*
JAIME KING, B.A., J.D., Ph.D. ..... *Director of UCSF/UC Hastings Consortium on Law, Science & Health Policy, and Professor of Law*
EUMI K. LEE, B.A., J.D. ..... *Clinical Professor of Law*
EVAN TSEN LEE, A.B., J.D. ..... *Professor of Law*
JEFFREY A. LEFSTIN, Sc.B., J.D., Ph.D. ..... *Associate Academic Dean and Professor of Law*
RORY K. LITTLE, B.A., J.D. ..... *Professor of Law*
CHRISTIAN E. MAMMEN, J.D. ..... *Lecturer in Law*
RICHARD MARCUS, B.A., J.D. ..... *Horace O. Coil ('57) Chair in Litigation and Distinguished Professor of Law*
LEO P. MARTINEZ, B.S., M.S., J.D. ..... *Albert Abramson Professor of Law*
UGO MATTEI, J.D., LL.M. .... *Alfred and Hanna Fromm Chair in International and Comparative Law and Distinguished Professor of Law*
SETSUO MIYAZAWA, M.A., M.PHIL., PH.D., LL.B., LL.M., J.S.D. ..... *Senior Professor of Law*
STEFANO MOSCATO, B.A., J.D. ..... *Lecturer in Law*
KAREN B. MUSALO, B.A., J.D. ..... *Director of the Center for Gender and Refugee Studies, and Director of the Refugee and Human Rights Clinic, and Professor of Law*
OSAGIE K. OBASOGIE, B.A., J.D., PH.D. ..... *Professor of Law*
DAVE OWEN, B.A., J.D. ..... *Visiting Professor of Law*
ROGER C. PARK, A.B., J.D. ..... *James Edgar Hervey Chair in Litigation and Distinguished Professor of Law*
JOEL PAUL, B.A., M.A.L.D., J.D. ..... *Professor of Law*
ASCANIO PIOMELLI, A.B., J.D. ..... *Professor of Law*
ZACHARY PRICE, J.D. ..... *Visiting Assistant Professor of Law*
HARRY G. PRINCE, B.A., J.D. ..... *Professor of Law*
SHEILA R. PURCELL, B.A., J.D. ..... *Director of the Center for Negotiation and Dispute Resolution, and Clinical Professor of Law*
RADHIKA RAO, A.B., J.D. ..... *Professor of Law*
AARON RAPPAPORT, B.A., J.D. ..... *Professor of Law*
MORRIS RATNER, B.A., J.D. ..... *Associate Professor of Law*
TRACEY ROBERTS, A.B., J.D., LL.M. ..... *Visiting Professor of Law*
DORIT RUBENSTEIN REISS, LL.B., PH.D. ..... *Professor of Law*
NAOMI ROHT-ARRIAZA, B.A., J.D., M.P.P. ..... *Professor of Law*
MICHAEL B. SALERNO, J.D. ..... *Clinical Professor of Law and Associate Director of the Center for State and Local Government Law*
REUEL SCHILLER, B.A., J.D., PH.D. ..... *Associate Dean for Research and Professor of Law*
LOIS W. SCHWARTZ, B.A., M.A., M.L.S., J.D. ..... *Senior Lecturer in Law*
ROBERT SCHWARTZ, B.A., J.D. ..... *Visiting Professor of Law*
ALFRED C. SERVER, M.D., PH.D. ..... *Affiliated Scholar*
JODI SHORT, B.A., J.D., PH.D. ..... *Associate Professor of Law*
GAIL SILVERSTEIN, B.A., J.D. ..... *Clinical Professor of Law*
JOANNE SPEERS, J.D., M.P.P. ..... *Affiliated Scholar*
MAI LINH SPENCER, B.A., J.D. ..... *Visiting Clinical Professor of Law and Academic Director of Lawyers for America*
NANCY STUART, B.S., J.D. ..... *Associate Dean for Experiential Learning and Clinical Professor of Law*
JOHN SYLVESTER, J.D. ..... *Visiting Professor of Law*
DAVID TAKACS, B.S., M.A., J.D., LL.M., PH.D. ..... *Associate Professor of Law*
YVONNE TROYA, B.A., J.D. ..... *Clinical Professor of Law*

JOANNA K. WEINBERG, J.D., LL.M. ..... *Senior Lecturer in Law*
MANOJ VISWANATHAN, S.B., S.M., J.D., LL.M. ..... *Associate Professor Designate*
D. KELLY WEISBERG, B.A., M.A., PH.D., J.D. ..... *Professor of Law*
LOIS WEITHORN, PH.D., J.D. ..... *Professor of Law*
JOAN C. WILLIAMS, B.A., M.C.P., J.D. ..... *Distinguished Professor of Law, UC Hastings Foundation Chair and Director of the Center for Worklife Law*
FRANK H. WU ..... *Distinguished Professor of Law*
TONI YOUNG, B.A., J.D. ..... *Assistant Dean of Legal Research & Writing and Moot Court*
MICHAEL ZAMPERINI, A.B., J.D. ..... *Visiting Professor of Law*
LAURIE ZIMET, B.A., J.D. ..... *Director of the Academic Support Program*
RICHARD ZITRIN, A.B., J.D. ..... *Lecturer in Law*

ADJUNCT FACULTY

GARY ALEXANDER, J.D. ..... *Assistant Professor of Law*
ROY BARTLETT, J.D. ..... *Assistant Professor of Law*
MARK BAUDLER, J.D. ..... *Assistant Professor of Law*
BRANDON BAUM, B.A., J.D. ..... *Assistant Professor of Law*
KARENJOT BHANGOO RANDHAWA, J.D. ..... *Assistant Professor of Law*
JAMES BIRKELUND, J.D. ..... *Assistant Professor of Law*
CORY BIRNBERG, B.A., J.D. ..... *Assistant Professor of Law*
DANIEL BLANK, J.D. ..... *Assistant Professor of Law*
YISHAI BOYARIN, J.D. ..... *Assistant Professor of Law*
DARSHAN BRACH, J.D. ..... *Assistant Professor of Law*
CHARLES R. BREYER, J.D. ..... *Assistant Professor of Law*
JOHN BRISCOE, J.D. ..... *Assistant Professor of Law*
JILL BRONFMAN, B.A., M.A., J.D. ..... *Program Director of the Privacy and Technology Project at the Institute for Innovation Law and Adjunct Professor of Law in Data Privacy*
DANIEL BROWNSTONE, J.D. ..... *Assistant Professor of Law*
EMILY BURNS, J.D. ..... *Assistant Professor of Law*
MICHAEL CARBONE, J.D. ..... *Assistant Professor of Law*
KAREN CARRERA, J.D. ..... *Assistant Professor of Law*
CARL W. CHAMBERLIN, A.B., J.D. ..... *Assistant Professor of Law*
ANDREW Y. S. CHENG, B.A., J.D. ..... *Assistant Professor of Law*
HENRY CHENG, J.D. ..... *Assistant Professor of Law*
KARL CHRISTIANSEN, J.D. ..... *Assistant Professor of Law*
RICHARD COHEN, B.A., J.D. ..... *Assistant Professor of Law*
PAMELA COLE, J.D. ..... *Assistant Professor of Law*
MATTHEW COLES, J.D. ..... *Assistant Professor of Law*
JAMES CORBELLI ..... *Assistant Professor of Law*
MARGARET CORRIGAN, J.D. ..... *Assistant Professor of Law*
PAUL CORT, J.D. ..... *Assistant Professor of Law*
JAMES CREIGHTON, J.D. ..... *Assistant Professor of Law*
MARK D'ARGENIO, B.A., J.D. ..... *Assistant Professor of Law*
PATRICIA DAVIDSON ..... *Assistant Professor of Law*
JOHN DEAN, J.D. ..... *Assistant Professor of Law*
SHASHIKALA DEB, J.D. ..... *Assistant Professor of Law*
BURK DELVENTHAL, J.D. ..... *Assistant Professor of Law*
LOTHAR DETERMANN, J.D. ..... *Assistant Professor of Law*
TERRY KAY DIGGS, B.A., J.D. ..... *Assistant Professor of Law*
JAMES R. DILLON, J.D., PH.D. ..... *Assistant Professor of Law*
ROBERT DOBBINS, J.D., LL.M. ..... *Assistant Professor of Law*
TOM DULEY, J.D. ..... *Assistant Professor of Law*
JAMES B. ELLIS, B.S., J.D. ..... *Assistant Professor of Law*
RANDALL S. FARRIMOND, B.S., M.S., J.D. ..... *Assistant Professor of Law*
TAMARA FISHER, J.D. ..... *Assistant Professor of Law*
JOHN FORD, J.D. ..... *Assistant Professor of Law*
ROBERT FRIES, B.A., J.D. ..... *Assistant Professor of Law*
MICHAEL GAITLEY, J.D. ..... *Assistant Professor of Law*
STACEY GEIS ..... *Assistant Professor of Law*
MICHAEL GOWE, J.D. ..... *Assistant Professor of Law*
JOSEPH GRATZ, J.D. ..... *Assistant Professor of Law*

CHARLES TAIT GRAVES, J.D. ..... *Assistant Professor of Law*
RICHARD GROSBOLL, J.D. ..... *Assistant Professor of Law*
JONATHAN GROSS, J.D. ..... *Assistant Professor of Law*
PAUL GROSSMAN, J.D. ..... *Assistant Professor of Law*
THEDA HABER, B.A., M.A., J.D. ..... *Assistant Professor of Law*
GEOFFREY A. HANSEN, B.A., J.D. ..... *Assistant Professor of Law*
HILARY HARDCASTLE, B.A., J.D., M.L.I.S. ..... *Assistant Professor of Law*
DIANA HARDY, B.A., J.D. ..... *Assistant Professor of Law*
SARA HARRINGTON, J.D. ..... *Assistant Professor of Law*
STEVE HARRIS ..... *Assistant Professor of Law*
SARAH HAWKINS, B.A., J.D. ..... *Assistant Professor of Law*
HOWARD A. HERMAN, A.B., J.D. ..... *Assistant Professor of Law*
DENNIS HIGA, B.A., J.D. ..... *Assistant Professor of Law*
MONICA HOFMANN, J.D. ..... *Assistant Professor of Law*
SARAH HOOPER J.D. ..... *Assistant Professor of Law*
ROBERT HULSE, B.S., M.S., J.D. ..... *Assistant Professor of Law*
TERI L. JACKSON, B.A., J.D. ..... *Assistant Professor of Law*
MORRIS JACOBSON, B.A., J.D. ..... *Assistant Professor of Law*
OKSANA JAFFE, B.A., M.A., J.D., LL.M. ..... *Assistant Professor of Law*
PEEYUSH JAIN, B.A., J.D. ..... *Assistant Professor of Law*
MARIA-ELENA JAMES, B.A., J.D. ..... *Assistant Professor of Law*
JULIA MEZHINSKY JAYNE, J.D. ..... *Assistant Professor of Law*
JAN JEMISON, B.S., M.B.A., J.D. ..... *Director of the Legal Education Opportunity Program and Adjunct Assistant Professor of Law*
STEPHEN JOHNSON, J.D. ..... *Assistant Professor of Law*
ORI KATZ, B.A., J.D. ..... *Assistant Professor of Law*
S. MICHAEL KERNAN, J.D. ..... *Assistant Professor of Law*
TAL KLEMENT, B.A., J.D., M.PP. ..... *Assistant Professor of Law*
ARLENE KOSTANT, B.A., M.A., J.D. ..... *Assistant Professor of Law*
DAVID KOSTINER, B.A., J.D. ..... *Assistant Professor of Law*
MANISH KUMAR ..... *Assistant Professor of Law*
WILLIAM LAFFERTY, J.D. ..... *Assistant Professor of Law*
CAROL M. LANGFORD, J.D. ..... *Assistant Professor of Law*
CLIFFORD T. LEE, J.D. ..... *Assistant Professor of Law*
JONATHAN U. LEE, J.D. ..... *Assistant Professor of Law*
R. ELAINE LEITNER, B.S., J.D. ..... *Assistant Professor of Law*
GARY LEWIS, B.Sc., J.D. ..... *Assistant Professor of Law*
STEPHEN LIACOURAS, B.A., J.D. ..... *Assistant Professor of Law*
FRANK LIND, J.D. ..... *Assistant Professor of Law*
ELIZABETH LINK, J.D. ..... *Assistant Professor of Law*
EUGENE LITVINOFF, J.D. ..... *Assistant Professor of Law*
ALLISON MACBETH, B.A., J.D. ..... *Assistant Professor of Law*
CECILY MAK, J.D. ..... *Assistant Professor of Law*
CHRISTIAN E. MAMMEN, J.D., PH.D. ..... *Assistant Professor of Law*
HARRY MARING, B.A., J.D. ..... *Assistant Professor of Law*
ALEXIUS MARKWALDER, J.D. ..... *Assistant Professor of Law*
JACK MCCOWAN, J.D. ..... *Assistant Professor of Law*
MARY MCLAIN, J.D. ..... *Assistant Professor of Law*
JOANNE MEDERO, B.A., J.D. ..... *Assistant Professor of Law*
JASON MEEK, J.D. ..... *Assistant Professor of Law*
ALAN MELINCOE, J.D. ..... *Assistant Professor of Law*
SAMUEL R. MILLER, J.D. ..... *Assistant Professor of Law*
THERESA DRISCOLL MOORE, B.A., J.D. ..... *Assistant Professor of Law*
JESSICA NOTINI, B.A., J.D. ..... *Assistant Professor of Law*
DANIELLE OCHS, B.A., J.D. ..... *Assistant Professor of Law*
MARI OVERBECK, B.A., J.D. ..... *Assistant Professor of Law*
ROGER PATTON, B.S., J.D. ..... *Assistant Professor of Law*
RICHARD PEARL, B.A., J.D. ..... *Assistant Professor of Law*
JAMES PISTORINO, J.D. ..... *Assistant Professor of Law*
RACHEL PROFFITT, J.D. ..... *Assistant Professor of Law*
ERIC QUANDT, J.D. ..... *Assistant Professor of Law*

CHARLES RAGAN, J.D. ..... *Assistant Professor of Law*
ROBIN REASONER, J.D. ..... *Assistant Professor of Law*
JENNIFER A. REISCH, B.A., J.D. ..... *Assistant Professor of Law*
CHRISTOPHER RIES, B.S., J.D. ..... *Assistant Professor of Law*
HON. A. JAMES ROBERTSON, J.D. ..... *Assistant Professor of Law*
KEVIN ROMANO, J.D. ..... *Assistant Professor of Law*
DAVID ROSENFELD, B.A., J.D. ..... *Assistant Professor of Law*
KATHRYN ROSS, B.A., J.D. ..... *Assistant Professor of Law*
ROBERT RUBIN, J.D. ..... *Assistant Professor of Law*
DOUGLAS SAELTZER, J.D. ..... *Assistant Professor of Law*
ROBERT SAMMIS, B.A., J.D. ..... *Assistant Professor of Law*
JOACHIM SCHERER ..... *Assistant Professor of Law*
JONATHAN SCHMIDT, J.D. ..... *Assistant Professor of Law*
JAMES SCHURZ, J.D. ..... *Assistant Professor of Law*
NINA SEGRE, J.D. ..... *Assistant Professor of Law*
BAHRAM SEYEDIN-NOOR, J.D. ..... *Assistant Professor of Law*
ROCHELLE SHAPELL, B.A., M.P.H., J.D. ..... *Assistant Professor of Law*
ANN SHULMAN, B.S., J.D., LL.M. ..... *Assistant Professor of Law*
ERIC SIBBITT, A.B., J.D., LL.M. ..... *Assistant Professor of Law*
LARRY SIEGEL, M.A., J.D. ..... *Assistant Professor of Law*
JEFFREY SINSHEIMER, A.B., J.D. ..... *Assistant Professor of Law*
ROCHAEL SOPER, J.D., LL.M. ..... *Assistant Professor of Law*
MATTHEW SOTOROSEN, J.D. ..... *Assistant Professor of Law*
MARK SPOLYAR, B.S.E., J.D. ..... *Assistant Professor of Law*
THOMAS E. STEVENS, B.A., J.D. ..... *Assistant Professor of Law*
AURIA STYLES, J.D. ..... *Assistant Professor of Law*
KIM SWAIN, J.D. ..... *Assistant Professor of Law*
ROBERT TERRIS, M.A., M.S., J.D. ..... *Assistant Professor of Law*
ABIGAIL TRILLIN, J.D. ..... *Assistant Professor of Law*
JEFF UGAI ..... *Assistant Professor of Law*
GLEN R. VAN LIGTEN, B.S., J.D. ..... *Assistant Professor of Law*
BRUCE WAGMAN, B.S., J.D. ..... *Assistant Professor of Law*
JAMES WAGSTAFFE, B.A., J.D. ..... *Assistant Professor of Law*
CRAIG WALDMAN ..... *Assistant Professor of Law*
LISA WALKER, J.D. ..... *Assistant Professor of Law*
VAUGHN WALKER ..... *Assistant Professor of Law*
ALLISON JANE WALTON, J.D. ..... *Assistant Professor of Law*
DAVID WARD, B.A., M.A., J.D. ..... *Assistant Professor of Law*
ANTON WARE B.A., M.A., J.D. ..... *Assistant Professor of Law*
JEFFREY WILLIAMS, A.B., J.D. ..... *Assistant Professor of Law*
JOHN D. WILSON, B.A., J.D. ..... *Assistant Professor of Law*
JOHN S. WORDEN, B.A., J.D. ..... *Assistant Professor of Law*
PAUL ZAMOLO., A.B., M.P.P., J.D. ..... *Assistant Professor of Law*